it is difficult to say by what principle the extent of the grant is to be limited, as that is matter of legislative discretion, having regard to the reasonable connection of the means with the end; and it is impossible to say that the amount of land granted in this case is absurdly beyond the needs of a great railroad for its terminal facilities. Besides the difficulty of seeing on general principles why this is a wholly unreasonable use of legislative discretion, there remains the difficulty of former holdings of the court. "We have no knowledge of any authority or principle which could support the doctrine that a legislative grant is revocable in its own nature, and held only *durante bene placito*," *Smith* v. *Taylor*, 9 Cranch, 93. "It is now too late to contend that any contract which a State actually enters into when granting a charter to a private corporation is not within the protection of the clause in the Constitution of the United States that prohibits States from passing laws impairing the obligation of contracts," *Stone* v. *Mississippi*, 101 U. S. 814. To go back on a principle so generally understood as this, is a radical thing to do, needing strong ground. The value of the present decision as an indication of the overthrow of this principle is weakened by its closeness, the Chief Justice and Mr. Justice Blatchford not taking part, and Mr. Justice Gray and Mr. Justice Brown concurring in the dissenting opinion of Mr. Justice Shiras.

RECENT CASES.

ARREST, ON CIVIL PROCESS — EXTRADITION. — Petitioner was in jail for a criminal offence. The day before the expiration of his sentence, on the requisition of the governor of another State, a warrant was issued for his apprehension. The next day, and after the expiration of his sentence, he was apprehended; but the keeper refused to surrender him, on the ground that on the previous day the prisoner had been entered on the jail-book as arrested on a civil writ, and committed for want of bail. The petitioner gave a bail-bond, and claimed a discharge on the ground that extradition proceedings could not be had against him while under arrest on civil process. *Held*, that the mere entry of a commitment on the jail-book did not constitute an arrest, and petitioner was properly held under the executive warrant. *In re Harriott*, 25 Atl. Rep. 349 (R. I.).

It seems that but two cases have arisen directly upon this point in the United States. *William* v. *Bacon*, 10 Wend. 636, and *Ex parte Rosenblatt*, 51 Cal. 285, both of which seem to be in general accord with the principal case.

BILLS AND NOTES — INDORSEMENT. — The payee of a note, a married woman, to accommodate the maker, wrote on the back of the note, "I hereby charge my separate estate with the amount of this note. [Signed] E. B. R." *Held*, that she was liable as indorser; for, as these words were equally consistent with any kind of an obligation, they had no effect on her signature, which without these constituted an ordinary indorsement. *Robertson* v. *Rowell*, 33 N. E. Rep. 898 (Mass.).

The words written above the signature set forth no obligation in themselves, but imply the existence of some other obligation to which they are collateral; and the natural inference from the situation is that this implied obligation is an ordinary indorsement. The court distinguishes this case from that of a guaranty — a distinct obligation — written by the transferor. Cf. 2 Daniel Neg. Instrs. § 1781–83.

BILLS AND NOTES — UNITED STATES CIRCUIT COURTS — JURISDICTION. — Act of Congress (25 Stats. at Large, p. 434) enacts that the circuit courts shall have jurisdiction over suits by assignees only in cases where the court would have had jurisdiction if no assignment had been made. In an action on a promissory note made for the accommodation of the payee, who was a citizen of same State as the maker, and indorsed to plaintiff, a citizen of another State, it was *held*, that the circuit court had jurisdiction, as the payee never had a cause of action against the maker, and therefore in indorsing the note did not assign, but created a cause of action which was at its inception a claim between citizens of different States. *Holmes* v. *Goldsmith*, 13 Sup. Ct. Rep. 288.

BILLS AND NOTES — WANT OF CONSIDERATION — BURDEN OF PROOF. — In an action on a draft, where defendant set up want of consideration, — *held*, that as it was an affirmative defence, the burden of proof was upon defendant. *McKenzie* v. *Oregon Imp. Co.*, 31 Pac. Rep. 748 (Wash.).

This decision seems correct on principle, but the authorities are in conflict. In accord with the principle case are: 83 Ala. 213; 16 Oregon, 437; 10 Bush, 234. But see *contra;* 62 Me. 155; 1 Allen, 412; 9 R. I. 76.

CONFLICT OF LAWS — STATUTE OF LIMITATIONS — ABSENCE FROM STATE. — The Illinois Statute of Limitations (Rev. St. c. 83, § 18, 20) provides that the time of a debtor's residence out of the State shall not be part of the time limited for the commencement of actions; and further, that when a cause of action has arisen in another State, and is barred by the laws of that State, no action shall lie thereon. *Held*, that where a debtor left the State before a cause of action arising therein was barred, and was sued as soon as he returned, it was no defence to the action that while out of the State he lived in another State long enough to bar the action according to the law of that State. *Wooley* v. *Yarwell*, 32 N. E. Rep. 891 (Ill.).

The decision is clearly correct. The Illinois Statutes make no exception of the case; and the courts cannot merely for the sake of comity recognize a foreign law that conflicts with the policy of domestic legislation.

CONSTITUTIONAL LAW — JURISDICTION IN AID OF INTERSTATE COMMERCE COMMISSION. — The twelfth section of the Interstate Commerce Act authorizes the Interstate Commerce Commission to inquire into the business and management of all carriers engaged in interstate business, and to subpœna witnesses for this purpose, and in case of disobedience to invoke the aid of the circuit courts of the United States. The courts may issue an order compelling obedience to the subpœna, and may punish failure to obey the order as contempt. *Held*, that the commission was an administrative, not a judicial body; that its application to the courts was not a "case" or "controversy," and therefore not within the jurisdiction of the United States Courts as declared by the Constitution; and that the section of the Interstate Commerce Act attempting to give jurisdiction was unconstitutional. *In re Interstate Commerce Commission*, 53 Fed. Rep. 476 (C. Ct., Ill.).

This decision is in the same line as the early cases on the subject of the jurisdiction of the Federal courts, and follows Field, J.'s decision in *In re Pacific Railway Commissioners*, 32 Fed. Rep. 251. It is a most damaging blow to the power of the Interstate Commission, which is left unable to compel witnesses to testify.

CONSTITUTIONAL LAW — OBLIGATION OF CONTRACTS. — When plaintiff recovered his judgment in an action based on contract, the rate of interest on judgments was seven per cent. A New York statute changed the rate to six per cent. *Held*, that interest on a judgment is not a part of the contract, but is in the nature of damages; that therefore a statute changing the rate of interest not yet due did not impair the obligation of contracts within the meaning of the United States Constitution. *Held*, also, that as the plaintiff was entitled under the statute to have his claim tried by the highest court of his State, he was not deprived of property without due process of law. Harlan, Field, and Brewer, JJ., *dissent.* *Morley* v. *Lake Shore R. R. Co.*, 13 Sup. Ct. Rep. 54.

A judgment is of course not a contract *proprio vigore*, within the meaning of the Constitution, — *i. e.*, a consensual contract, as opposed to one implied in law. *Louisiana* v. *Mayor*, 109 U. S. 285. But the dissenting judges say that there is a term in every contract, implied in fact and constructively present to the minds of the parties, that in case of a breach the injured party shall have not only damages, but interest on such damages at the rate then existing; they therefore hold that the statute in question impairs the obligation of contracts.

CONSTITUTIONAL LAW — PENAL LAW — GIVING FAITH TO RECORDS OF ONE STATE IN THE COURTS OF ANOTHER. — Stat. N. Y. 1875, c. 611, makes directors of corporations liable for its debts if they make false returns, and stockholders personally liable to the amount of their stock for debts contracted before the capital stock is fully paid in. A was held liable personally to plaintiff on both grounds by the New York court. Plaintiff then sued in the Maryland court to have a transfer by A of his property set aside as fraudulent, and to have such property subjected to the payment of the New York judgment. The bill was dismissed on the ground that the New York judgment was for a penalty, and therefore was not enforceable outside of that State. Plaintiff sued out writ of error on the ground that this decision failed to give "full faith and credit" to the decision of another State's court, and thus violated the United States Constitution. *Held*, that penal laws are those which impose punishment for an

offence against the State; and the term does not include statutes which give a private right of action against a wrong-doer. Therefore the statute in question here is not a penal statute in a sense to make it unenforceable by the courts of another State, Therefore the decision of the Maryland court violated the United States Constitution, art. 4, § 1, because it failed to give faith and credit to the judgment of another State. *Huntington* v. *Attrill*, 13 Sup. Ct. 224.

CONSTITUTIONAL LAW — TAX ON INTERSTATE COMMERCE — POLICE POWER. — Under Stat. Ill. the city of Chicago laid a license tax on tugs which towed vessels in the Chicago River. Plaintiff owned tugs licensed by the United States to engage in the coasting trade, and resisted payment of the city tax. The Supreme Court of Illinois held the tax valid, on the ground that, as the city had spent large sums in improving the river, this tax was really a compensation for benefits conferred on plaintiff by the improvements. On writ of error it was *held*, that this license tax is unconstitutional, as a tax on interstate commerce. It is not valid as a charge for benefit conferred by the city in deepening the river, — first, because the ordinance does not profess to be laid for this purpose; second because it does not in fact appear that the tugs get any special benefit from the improvements. *Harmon* v. *City of Chicago*, 13 Sup. Ct. Rep. 306.

The court here relies on the authority of *Gibbons* v. *Ogden*, 9 Wheat. 210; *Foster* v. *Davenport*, 22 How. 244; and *Moran* v. *New Orleans*, 112 U. S. 69. The only noteworthy matter in the case is that the State court should have upheld the tax at all.

CONTRACTS — PROMISE IMPLIED BY LAW. — Defendant made an agreement with plaintiff for "lease" of "all the coal" in plaintiffs' land. Defendant was to pay a certain royalty per ton on all coal which it took, and was to mine the coal itself. It was to take only coal of a certain quality and which could be mined at a certain profit, but was to mine not less than a certain number of tons per annum. There was no limit to the time which defendant should have to work the mine. The defendant worked the mine so negligently that long before all the coal which would meet the requirements of the contract was dug, it became impossible to dig any more. Plaintiff sued on the contract, and the defendant contended that she had no cause of action while defendant continued to pay what she would have received each year if the minimum fixed by the agreement had been mined. *Held*, that this was an executory contract, and not a deed of the coal as it lay in the land. As both parties had contemplated that the plaintiff would receive each year much more than the minimum, and as the plaintiff would hardly have made the contract without such a prospect, the court would imply a promise on the part of the defendant not to incapacitate itself negligently from taking out more than the minimum amount of coal each year, and thus destroy the plaintiff's chance of receiving more than the minimum payment. *Genet* v. *D. & H. Canal Co.*, 32 N. E. Rep. 1078 (N. Y.).

If the court had held that the agreement was simply a sale of all plaintiff's coal which would be mined at a certain profit, it might well have implied a promise on the part of defendant not negligently to incapacitate itself from getting out the coal, and thus to lessen the amount which plaintiff should receive under the contract. The case cited on the opinion (*McIntyre* v. *Belcher*, 14 C. B. N. S. 654) would have supported that position. The case, however, does not support the implication made by the court; and it is submitted that the court went to the extreme limit in implying a promise that defendant should keep the mine in such a state that the plaintiff should receive a greater sum per annum than was called for by any part of the contract.

CONTRACTS — RESTRAINT OF TRADE. — The Associated Press of New York, incorporated for the procuring and supplying of its members with telegraphic news and the promotion of the general interests of the profession, passed a by-law forbidding any member to "receive and publish the regular news depatches of any other news association covering a like territory and organized for a like purpose with this association." *Held*, that this by-law was not void as unreasonable or as in restraint of trade. *Matthews* v. *Associated Press*, 32 N. E. Rep. 981 (N. Y.).

The court comments with approval on the growing tendency towards greater leniency in handling agreements in restraint of trade. It treats this by-law as intended to secure the highest skill of each member in gathering news, by confining publication to news so collected; and thus the restriction is in effect the same as the common agreement in partnerships requiring each partner not to engage in any other business.

CORPORATIONS, MUNICIPAL — COUNTY BONDS. — Const. Celo. art. 11, § 6, forbids counties to issue bonds beyond a certain amount. Statute 1887 provides that the commissioners of each county shall make a semi-annual statement of the debts of the county, which shall be entered on the record, and be open to public inspection. Defendant county, being already indebted beyond the limit, issued bonds which contained a recital

that the bonds were duly issued under the statute. *Held*, that these recitals did not estop the county from proving by the county records that the bonds were unconstitutionally issued, and therefore void. *Sutliff* v. *Board of Comm'rs for Lake County*, 13 Sup. Ct. Rep. 318.

The court follows *Dixon Co.* v. *Field*, 111 U. S. 83, and *Lake Co.* v. *Graham*, 130 U. S. 674, and distinguishes *Chaffee Co.* v. *Potter*, 142 U. S. 355. The test is whether the facts on which the validity of the bonds depends are matters of public record. If they are, it is the duty of purchasers to inspect the records. But if a purchaser by an inspection of the records could not see whether the issue was valid, the county would be estopped by such recitals in the bonds.

CORPORATIONS — RAILROADS — DIVERTED EARNINGS. — Money to the amount of $2,300, derived from earnings of a railroad, was applied to permanent improvement. Subsequently a receiver under authority of court issued certificates for $30,000 to satisfy claims incurred for operating expenses. *Held*, that the issue of such certificates was a restoration by the bondholders of the amount diverted for their benefit, and that one who had furnished supplies, although he had not received certificates, could not establish a lien ahead of the bondholders. *Finance Co. of Pennsylvania et al.* v. *C. C. & C. R. Co. et al.* (*Pocahontas Coal Co. et al., Intervener*), 52 Fed. Rep. 524 (C. Ct.; S. Carolina).

CORPORATIONS — RAILROADS — DIVERTED EARNINGS. — A lawyer employed in a State where a railroad is only under construction, cannot establish a lien on the ground that earnings have been diverted; for this equity only attaches in favor of those who have contributed to the operation of the railroad as a going concern. *Finance Co. et al.* v. *C. C. & C. R. Co. et al.* (*Moon, Intervener*), 52 Fed. Rep. 526 (C. Ct.; S. Carolina).

CORPORATIONS — RAILROADS — DIVERTED EARNINGS. — A lawyer employed to maintain the validity of bonds issued to aid a railroad is not entitled to a lien on the ground that earnings have been diverted, especially when his services were rendered two years before the apppointment of a receiver. *Finance Co. et al.* v. *C. C. & C. R. Co. et al.* (*Shand et al., Interveners*), 52 Fed. Rep. 678 (C. Ct.; S. Carolina).

The three cases noted are explanatory of the rule in *Fosdick* v. *Schall*, 99 U. S. 235, the underlying principle of which is this: "The earnings of the railroad must first be applied to meet the outlays necessary to keep it a going concern. Only after this application can the bondholders lay any claim to them. If earnings have been diverted from this primary purpose, and used for the advantage of the bondholders, either in payment of interest or in permanent improvements which tend to enhance the value of the property, the sums thus diverted must be restored, and the restoration must be from the income. If this fail, then the diversion must be met out of the proceeds of sale." Simonton, J., in 52 Fed. Rep. 525. While the courts favor a strict construction of the doctrine, a later case, *Farmers' Loan & Trust Co.* v. *R. R. Co.*, 53 Fed. Rep. 182 (C. Ct., Kans.), contains an elaborate *dictum* by Caldwell, J., who makes the rule very broad and applicable to any claims for services rendered in keeping a railroad a going concern or in constructing it, whether or not earnings were diverted. An exhaustive note is appended to the case by Mr. M. M. Cohn, of Little Rock, who argues strongly in favor of the broad doctrine.

CORPORATIONS — RESCISSION OF VOTE OF DIVIDEND. — *Held*, that where the fact that a dividend has been voted by directors is not made public or communicated to the stockholders, and no fund is set apart for payment, the vote may be rescinded. *Ford* v. *Easthampton Rubberthread Co.*, 30 N. E. Rep. 1036 (Mass.).

The doctrine as usually stated is that a dividend, when *declared*, is irrevocable (1 Morawetz Corp. § 445). The meaning of *declared*, however, has not been laid down, though there are cases holding that there was a declaration where a fund was set apart (*King* v. *R. R.*, 29 N. J. Law, 82), where stockholders were credited with the dividends on the books (*Van Dyke* v. *McQuaide*, 86 N. Y. 38), and even where the directors voted to declare a dividend and credit it on the books (*Beers* v. *Bridgeport Spring Co.*, 42 Conn. 17 *sem.*). The principal case lays down the first limitation of the essentials of a *declaration* by holding that a mere vote of the directors without publication is not sufficient.

EQUITY — ENJOINING ACTIONS AT LAW — MULTIPLICITY OF ACTIONS. — A number of persons brought actions for injuries to their respective property caused by sparks from defendant's engine. As the losses arose from the same occurrence and involved the same questions of law of fact, defendant filed a bill that plaintiff be enjoined from prosecuting separate actions, and be required to come into equity. *Held*, mere community of interest in the questions of law and fact involved will not warrant an injunction and joinder of all the plaintiffs in one suit to prevent multiplicity of actions. There

must be some ground for equitable interference in the subject matter of the controversy, or some common right or title in issue. *Tribbette* v. *Ill. Cent. R. R. Co.*, 12 So. Rep. 32 (Miss.).

This case expressly disagrees with the opinion of Pomeroy, who in an elaborate argument insists that a joinder should be allowed where there is mere community of interest in the questions of law and fact involved (Pomeroy, Eq. Juris. 2d ed., § 267–269). The principal case, however, seems to follow the sounder principles of equity jurisdiction. *Marcelis* v. *Canal Co.*, 1 N. J. Eq. 31; *Cutting* v. *Gilbert*, 5 Blatch. 261–263; *Youngblood* v. *Sexton*, 32 Mich. 406 (opinion by Judge Cooley). Is it not a safe practical rule to permit such a joinder as this only where the claims depend on the same law and facts, and the relief demanded is identical? Here the damages to be proved by the parties might be very different.

EQUITY — QUIETING TITLE — CONDITIONAL DECREE. — D, a trustee of the plaintiff town, forged a resolution authorizing him to sell land, and under color of it sold some of the town lands to defendant. Subsequent trustees of the town, in ignorance of the forgery, sued D to judgment for failing to account for the proceeds of the sale. Before receiving satisfaction, the trustees discovered D's fraud, and abandoning further proceedings against D, brought this suit to set aside and cancel this deed as a cloud on the town's title. *Held*, that plaintiff could have relief only on condition of assigning to defendant its judgment against D. *Trustees of Easthampton* v. *Bowman*, 32 N. E. Rep. 987 (N. Y.).

The decision is an interesting application of the maxim "That he who seeks equity must do equity."

EVIDENCE — EVIDENCE OF EXPERIMENTS. — In a case where it was material to show that a car moving on a down grade had jumped forward at the release of the brakes, *held*, that it was error to exclude evidence of the result of an experiment made at the same place under similar conditions. McBride, J., *dissented*. *C. St. L. & P. R. R.* v. *Champion*, 32 N. E. Rep. 874 (Ind.).

The report does not state whether the trial court excluded the evidence as a matter of right or as an exercise of discretion. It is submitted that unless the former was the case, the decision cannot be supported; for this experiment was logically a probative matter, but objectionable as tending to multiply issues, and as likely to have an undue weight with the jury. The force of these objections varies so much with the particular circumstance of each case that the admissibility of the evidence should be left to the discretion of the trial court.

EVIDENCE — HEARSAY — PROOF OF AGE. — To prove infancy, plaintiff offered the testimony of his brother and brother-in-law that by reputation in the family he was under twenty-one. *Held*, the evidence was hearsay and inadmissible. *Rogers* v. *De Bardelaben &c. Co.*, 12 So. Rep. 81 (Ala.).

It is the rule that a witness may swear to his own age, probably because his information, derived from family talk, birthdays, and other sources, amounts practically to knowledge of the fact. 9 W. Va. 559; 34 Mich. 296; 126 Mass. 234; 142 Mass. 466; 40 Fed. Rep. 235; 108 N. C. 747. The testimony of a brother is based upon information of the same sort, though not quite as likely to be accurate. The exclusion of it is perhaps questionable, unless the testimony of the party himself is a single exception to the rule against hearsay, the limits of which cannot be extended.

EVIDENCE — RES GESTÆ — DECLARATION OF INTENTION. — Defendant changed his abode; to prove that he intended a permanent change of residence, he was allowed to show certain acts, with accompanying declarations. These were allowed as part of the *res gestæ*. *Viles* v. *Waltham*, 32 N. E. Rep. 901 (Mass.).

Knowlton, J., cites *Trefethen's Case*, 31 N. E. 961; 6 Harv. Law Rev. 266, where a declaration of deceased that she intended to commit suicide was admitted. But he is of opinion that declarations of intention when made by a party to the suit should be restricted, because they are often biassed, especially if made after the beginning of the action. They have also been often excluded, unless corroborated by being accompanied by acts which are admissible in evidence.

INSOLVENCY — DISTRIBUTION OF ASSETS. — Where there were both secured and unsecured creditors of an insolvent, *held*, that the secured creditors should first exhaust their security, apply the proceeds to the diminution of their claims, and then share on the balance of their claims *pro rata* with the unsecured creditors. *Dexter* v. *Schwabacher*, 31 Pac. Rep. 755 (Wash.).

The authorities are conflicting. In accord with the principal case are: 11 Paige, 581; 16 Mass. 308; 13 Ia. 515. But see *contra*: 121 N. Y. 328; 25 R. I. 480; 82 Mich. 607.

PROCEDURE — REMOVAL OF CAUSES — DIVERSE CITIZENSHIP — ACTION BY STATE. — A suit by a State in one of its own courts against a citizen of another State is not removable to the United States Circuit Court on the ground of diverse citizenship of the parties. *State of Indiana* v. *Tolleston Club of Chicago*, 53 Fed. Rep. 18 (C. Ct., Ind.).

PROCEDURE — REMOVAL OF CAUSES — WAIVER OF OBJECTION TO IMPROPER SERVICE. — According to the settled rule of the Sixth Circuit, a defendant who removes a cause to a Federal court will not there be heard to say that he was not properly brought before the State court, when he has failed to raise this point before applying for removal. *Bentlif* v. *Finance Corp.*, 44 Fed. Rep. 667, disapproved. *New York Construction Co.* v. *Simon*, 53 Fed. Rep. 1 (C. Ct., Ohio).

REAL PROPERTY — ADMINISTRATION OF ESTATE OF PERSON PRESUMED DEAD. — Where a person disappeared from home, and was not heard of for more than seven years, and, administration of his estate being granted, his land was sold, *held*, he could not recover it in ejectment from an innocent purchaser. *Scott* v. *McNeal*, 31 Pac. Rep. 873 (Wash.).

The court follows *Roderigas* v. *Savings Institution*, 63 N. Y. 460, which though heretofore standing alone, is approved by Woerner, Adm'n, § 211. For authorities holding the contrary view, see Woerner, Adm'n, §§ 208, 209.

REAL PROPERTY — EMINENT DOMAIN — HIGHWAY CROSSING RAILROAD. — Where a highway was located across the tracks of a railroad, *held*, that the railroad company was entitled to compensation for all expense incurred in the establishment of the crossing. *Chicago, &c. R. R. Co.* v. *Board of Com'rs of Chatauqua County*, 31 Pac. Rep. 736 (Kansas).

Johnston, J., *dissents*, on the ground that the franchise and right of way, having been obtained from the public, are held subject to the right of the public to extend highways across such right of way whenever it becomes necessary. In accord with the opinion of the court are: 45 Kan. 716; 24 Ind. 325; 14 Gray, 155; 49 Mich. 47; 14 S. W. Rep. 808 (Mo.). But see *contra*: 29 N. E. Rep. 1109 (Ill.); 79 Me. 386; 24 N. Y. 345; 38 Ohio St. 150; 27 Vt. 140.

STATUTE, CONSTRUCTION OF — NATURE OF CHINESE EXCLUSION ACT. — The Chinese Exclusion Act, which provides that any Chinese person arrested under its provisions shall be deemed to be unlawfully in the United States, unless he can affirmatively prove his right to be here, and also "That any such Chinese person . . . convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period not exceeding one year, and thereafter removed from the United States," is political, not criminal, and an indictment under it must be quashed. *United States* v. *Hing Quong Chow*, 53 Fed. Rep. 233 (C. Ct., La.).

No authorities are cited by Billings, J., to support this decision, and a special search has failed to produce any directly upon it. The court held that the proceeding of keeping out obnoxious foreigners must be summary to be effective, and that the criminal law was therefore inapplicable; and that while Congress might have reversed the common rule as to burden of proof as to a political, it was not to be supposed that it would as to a criminal offence.

TORT — CORPORATION — DAMAGES. — Defendant's conductor imprisoned and insulted plaintiff, a passenger, in a wanton manner. There was no evidence that defendant had any means of knowing that its conductor was not a suitable person for his place. *Held*, that as defendant was not at fault in having the conductor in its service, it was not liable for punitive damages. *Lake Shore & M. S. Ry. Co* v. *Prentice*, 13 Sup. Ct. Rep. 261.

This decision is based on the doctrine of punitive damages as applied to a natural principal; that some fault in the principal must be shown to hold him liable in punitive damages for the torts of his agent for which the latter is liable in punitive damages. There is no good reason for enforcing a harsher rule against a corporation principal. This view is put forward in Sedgwick on Damages, 8th ed., § 378, and 2 Morawetz Corporations, 2d ed., §§ 728, 729, where the cases on the subject are collected.

TORT — DAMAGES — REMOTENESS OF MENTAL SUFFERING. — *Held*, in an action for non-delivery of a telegram, that it was error to allow the jury to include as subject for compensation the plaintiff's grief at the suffering caused his wife by the absence of their daughter from a funeral to which the telegram had summoned her. That part of the father's suffering which was caused directly by his daughter's absence is proper subject for compensation. *W. U. Telegraph Co.* v. *Strateweier*, 32 N. E. Rep. 871 (Ind.).

This decision follows the leading case of *Reese* v. *Telegraph Co.*, 123 Ind. 294, in allowing damages for mental suffering, but limiting them by the ordinary tests of remoteness, peculiarly difficult in such cases, but necessary if the damages are to be allowed at all.

TORT — EMPLOYERS' LIABILITY ACT — EFFECT UPON CONTRACTS FOR SERVICE. — Plaintiff contracted in Alabama to serve defendant as a brakeman, and was injured in Mississippi by the negligence of a fellow-servant. At common law, which prevails in Mississippi, defendant would not be liable, but by the Employers' Liability Act of Alabama he would be. An action was brought in Alabama, on the ground that the act was part of the contract of service, and the liabilities which it prescribed attended the contract wherever performance was required. *Held*, the liabilities prescribed are not contractual liabilities, so there can be no recovery. *Alabama G. S. R. Co.* v. *Carroll*, 11 So. Rep. 803 (Ala.).

TORT — EMPLOYERS' LIABILITY ACT — VOLENTI NON FIT INJURIA. — Defendant had no railing along a run in his coal-shed where plaintiff wheeled coal, and plaintiff was thereby injured. The defect was "in the ways, works, and machinery" within the terms of the Employers' Liability Act, but plaintiff entered the service knowing the danger and had remained in it for fifteen years. *Held*, a workman impliedly contracts to take obvious risks of the business when he enters service. *O'Maley* v. *Gaslight Co.*, 32 N. E. Rep. 1119 (Mass.).

Alabama G. S. R. Co. v. *Carroll*, *supra*, seems clearly right in not reading the Employers' Liability Act into the contract of service. To read it in, however, would seem little less arbitrary than to imply a contract not to take advantage of it, as the court substantially do in this case. The court say the precise question here involved has never been settled in England, because the danger here existed before the contract was made. But it is submitted that contract has nothing to do with the case, and talk about implied contracts which the parties never contemplated is only confusing. The only question is whether the plaintiff knew of the risk and consented to take it. If so, *volenti non fit injuria* applies, and the case falls within the principles of *Smith* v. *Baker*, [1891] App. Cas. 325. The result reached in the case is not criticised.

TORT — NEGLIGENCE — BLOWING LOCOMOTIVE WHISTLE. —Plaintiff below was injured as a result of the fright of his horse at the sound of a locomotive whistle. The trial judge instructed the jury that if, in that place, there was no "imminent or immediate danger to life or property," the blowing of the whistle was negligent. *Held*, such instruction was correct as a common law rule. *Northern Pacific R. R. Co.* v. *Sullivan*, 53 Fed. Rep. 219 (C. Ct. App., Minn.).

The court cites Shearman & Redfield on Negligence, § 56, as to when the court can rule as to what is negligence. In this case an affirmative act of the defendant was held as matter of law to be negligent, while generally such rulings have been as to negative acts or omissions.

TRUSTS — INSANITY OF PARTY CREATING. — Plaintiff's husband borrowed money of A. on his promissory note. To secure this note plaintiff and her husband executed a deed of trust to the defendant, conveying with other land some land of plaintiff's. Plaintiff was insane at the time of the execution of the deed, though A. had no knowledge of it, and acted in good faith. *Held*, that upon these facts plaintiff was not entitled to have the deed of trust cancelled, and defendant enjoined from selling the land under a power contained in the deed. *Blount* v. *Spratt*, 20 S. W. Rep. 967 (Mo.).

It is frequently held that contracts and conveyances of insane persons are binding in favor of parties without notice of insanity if the insane person has received fair value for his promise or conveyance; but this case goes a step beyond, and holds the insane person liable, though she receives no benefit whatever. None of the authorities which the court cites support this extreme position. It was held in *Imperial Loan Co.* v. *Stone*, [1892], Q. B. D. 599, that a surety cannot escape liability on the ground of insanity; but we have found no other case which goes so far, while the following cases lay down rules which lead to the opposite result from that of the principal case: *Moore* v. *Hershey*, 90 Pa. 197: *Wireback's Ex'r* v. *Nat. Bank of Easton*, 97 Pa. 543.

TRUSTS — WHEN COURT WILL NOT IMPLY. — Defendant undertook to make the purchase of certain land for the benefit of himself and plaintiffs, in accordance with an oral agreement made with plaintiffs. In violation of his agreement, defendant made a contract for a conveyance to himself, and refused to give to plaintiffs any interest in the land. Plaintiffs brought a bill praying that defendant should give them an interest, but were defeated. *Emerson et al.* v. *Galloupe et al.*, 32 N. E. Rep. 118 (Mass.).

The court speak as though there were no ground for implying a trust, except that an express trust had failed through the Statute of Fraud; but this seems a clear case of a fiduciary competing with one who has reposed confidence in him, and therefore just the case where a constructive trust should be raised. The Massachusetts court has for precedents on similar facts, *Collins* v. *Sullivan*, 135 Mass. 461, and *Burden* v. *Sheridan*, 36 Ia. 125; *Rose* v. *Hayden*, 35 Kan. 106, is *contra*.